CF0000061196

CA 1892/97

(2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 1164 Name बालमति

Father's name पत्नि धरमू राठिया

Residence ~~दर्ग रुम~~ लोदामुडा धरोडा Age 58 वर्ष

Sentenced to 1 वर्ष एव आजीवन कारावास On 2-8-97

Under section 342/302/34 भा.दं.सं. by द्वितिय अपर सत्र न्यायाधीश रायगढ़

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 2.8.97

2 Date on which copy received 2.8.97

3 Date on which Appeal sent 2.8.97 / 4.8.97

4 Whether the prisoner wishes to be represented or not – Yes / ~~No~~

No. 1164 Name बालमति

Confined in जिला Jail रायगढ़

No. 2132 Dated 2.8.97 199

Forwarded to the CHIEF JUDICIAL MAGISTRATE रायगढ़

together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Raikwad
Superintendent
DISTRICT JAIL, RAIGARH (M. P.)
Jail

Date of receipt in 6-8-97 office

Date of receipt record to accompany the 7.8.97

Memo of Appeal to the Appellate court —

No Q/Com Dated 12-8-97 199

Forwarded to the जिला & Sessions Judge Raigarh
with Record in S.T. No. 69/97 dt. 2/8/97 file A, B and Cri. Case No. 76/97 dt. 26/2/97 file A & B of Dharam Vs Dhanram & Ors.

Date of receipt in Appellate Court

जिला न्यायिक दण्डाधिकारी
रायगढ़ (म. प्र.)

(P. T. O.)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal NO. 1892/1997

Balmati

Vs.

State of Madhya Pradesh
(Now Chhattisgarh)

Coram: **Hon'ble Shri Fakhruddin and**
Hon'ble Shri Dhirendra Mishra, JJ

Present: Shri V.D. Bajpai, Sr. Adv. with Shri Ramakant Tiwari, counsel for the appellant.

Shri Sanjay Kumar Agrawal, Panel Lawyer for the State.

JUDGMENT

Per Dhirendra Mishra, J.

Heard learned counsel for the parties.

2. The appellant has preferred this appeal against the judgment delivered on 2-8-1997 in Sessions Trial No. 69/97 by the IIth Additional Sessions Judge, Raigarh, by which the trial Court after holding the Dharmu (since dead) and Balmati guilty for causing death of their son Babu Kumar, has convicted them under Section 302/34 of the Indian Penal Code and sentenced to undergo imprisonment for life and under Section 342 of I.P.C., R.I. for one year respectively.

3. Briefly stated the prosecution story is that on 10-1-1997 at about 7.00 in village Baihamuda, deceased had returned to his home after performing worship and sacrifices and was cooking in his verandah along with his wife. Accused Dharmu went there in a drunken condition and stated that they shall share food together and took the deceased in his room. Balmati also accompanied him. Thereafter Balmati closed the door and Dharmu assaulted Babu Kumar by an axe over his head,

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buttocks and neck. The deceased cried "save save". At that moment, Moharmati and others reached there and opened the door and saw that the deceased was lying dranched in blood. There were big wounds over his head, face and buttocks. The incident was reported in the Police Station Gharghoda by Moharmati whereupon offence under Sections 342, 302 read with Section 34 of I.P.C. under offence No. 7/97 was registered against the accused persons vide Ex. P-1. Inquest of the dead body was performed vide Ex. P-3 in presence of the witnesses. Dead body was sent for autopsy to Primary Health Centre, Gharghoda vide Ex. P-13 where Dr. B.R. Banjare conducted autopsy and submitted his report of Ex. P-13-A. Blood stained soil and plain soil were seized vide Ex. P-4 and P-5. On the memorandum of Ex. P-8 of the accused, a blood stained axe was taken into possession vide Ex. P-6. The sealed packet containing blood stained clothing of the deceased was taken into possession on being produced by constable Nikolas Ekka vide Ex. P-7. The seized articles – blood stained soil, blood stained axe and blood stained clothings of the deceased were sent for chemical examination to Forensic Science Laboratory vide Ex. P-15. The report of chemical analyst is Ex. P-17. After completing investigation, chargesheet was filed in the Court of Judicial Magistrate First Class, Gharghoda who in turn committed the case to the Court of Session, Raigarh and the same was received on transfer by the Additional Sessions Judge, Raigarh.

4. Charges under Section 342 read with Section 34 of I.P.C. and under Section 302 of I.P.C. were framed against the appellant who abjured the guilt. The prosecution in order to establish the charges examined as many as 8 witnesses and thereafter statement of accused was recorded under Section 313 of Cr.P.C. The appellant denied the circumstances appearing against her in the prosecution case and

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pleaded innocence and false implication. However, the learned trial Court after hearing the learned counsel for the parties, convicted and sentenced her as above.

5. The homicidal death of the deceased is not in dispute. Dr. Banjare P.W.8 who has conducted post mortem and submitted his report of Ex. P-13-B found following injuries:-

I. **Incised-wound**: Size 2" x 0.5" x 3" over left side occipital part of Head. Scalp margins are regular, edges are even. Scalp, scull bone, all three edges and cerebellum left side all are incised and cut, red blood clots were present. Red in colour. Transverse in position. Intracranial – Hemorrhages present. It is Ante-Mortem in nature.

II. **Incised –wound**: 2" x 0.2" x 0.2" over left side cheek (Face) margins are regular, edges are even, red in colour, skin, fascia and muscles are cut.

III. **Incised-wound**: 2" x 0.5" x 2" over left side buttock, margins are regular, edges are even, red in colour, Blood clots were present. Skin, fascia, muscles are incised & cut. The outer edge of the left side pelvic bone socket is cut half inches depth. Red blood clots present. Ecchymosis of blood present underneath the injured part. It is Ante-Mortem in nature.

IV. **Incised-wound:** 1.5" x 0.5" x 1" over left side buttocks half inches above the injury no. III. Margins are regular, edges are even & clean, cut, skin fascia & muscles are cut, red in colour, Blood clots present, Red in colour, Extravazansa of blood present underneath the injury. Ante-Mortem in nature.

V. **Abrasion**: 2" x 0.5" over the left buttock, at upper part, skin was abraded, red in colour.

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VI. **Abrasion**: 2" x 0.5" over the left side faces of chest at lower, skin was abraded, red in colour.

Ecchymosis-Extravasation of blood were present underneath all the six injuries. All the injuries were red in colour. All the injuries were Ante-Mortem injuries in nature. All the injuries were within 18 hours of duration.

The injury no. 1, 2, 3 & 4 may have been caused by the sharp and cutting object and the injury no. V & VI may have been caused by dashing & rubbing against the hard and rough surfaces.

The injury no. I & III are grievous injuries and the injury no. I was fatal injury in my opinion due to which the death may have been occurred due to lesion of the cerebellum. Rest of all the injury no. 2, 4, 5 & 6th are simple injury in nature.

All the injuries are Homicidal-Injuries in nature my opinion.

Dr. Banjare has opined the cause of death as excessive bleeding due to injuries caused on the head and the same was homicidal in nature. Therefore, the homicidal death of deceased Babu Kumar is established.

6. So far as involvement of the accused/appellant in crime in question is concerned, the conviction is based on statements of Neera P.W.1, Moharmati P.W. 2 and Pyas P.W. 3. P.W. 1 Neera has stated that Babu Kumar is her son-in-law. He is dead. The incident is in the evening of last Kartik month when the sun was already set. Accused Dharmu called the deceased inside and said that your life is in danger and he shall kill you and thereafter gave many blows over his head. She has further stated that she was there and saw and heard about the incident. Her daughter was also there. The deceased was son of the

accused. Earlier also whenever there was a quarrel, accused used to say so. Then they brought the deceased in the room and thereafter they took him to the house and from there to the police station. While bringing out him of the police station, he died on the way. In the cross-examination, she has stated that on the date of the incident, the deceased had consumed liquor, however the toxic liquor had evaporated. She had denied the suggestion that at the time, she and Moharmati had consumed liquor and stated that she and her daughter had seen the incident and they had also tried to save but could not save as the accused had fallen them on the ground. Learned counsel for the appellant submits that even according to the prosecution, this witness is not an eye-witness and this subsequent improvement is made during the course of investigation and therefore her statement could not be relied upon. Similar is the statement of Moharmati P.W. 2, the wife of the deceased who has stated that the accused persons are her mother-in-law and father-in-law and the deceased was her husband who is dead. The incident is of the month of *Poos*. On that day, her husband was in the home and accused Dharmu took him on the pretext of taking meals and thereafter her mother-in-law shut the door and she heard the voice of her husband "A Bai, I shall not survive". She further stated that thereafter she and her aunt Neera (wrongly typed as Meera) pushed the door and saw that accused Dharmu had assaulted her husband with an axe on his head, cheek and back portion of waist. Except her son Anuj, none was present there. Thereafter they took the husband to Gharghoda hospital. She has stated that she does not know as to why her husband was killed. She has stated that her father-in-law used to say after consuming liquor that he shall kill her husband. In the cross-examination, this witness has admitted that all the persons had consumed liquor, however, Dharmu excessively consumed liquor and

he was not in senses and he was hardly able to stand. Pointing out towards the contradictions present in the F.I.R. of Ex. P-1, and case diary statement of this witness, learned counsel for the appellant submits that reliance cannot be placed on the statement of this witness as there are material contradictions and omissions in her statement. He further submits that this witness also claims to have seen the incident which is a material improvement during trial. P.W. 3 Pyas has stated that deceased Babu Kumar is his brother-in-law. On hearing cries of his sister Moharmati that her father-in-law has killed her husband this witness went there from his house and from there they took the deceased to the police station and from the police station to the hospital. Thus from the statement of this witness, we find that he is a witness who came there after the incident when Moharmati shouted that her husband has been assaulted by her father-in-law.

7. So far as involvement of the accused Dharmu in crime in question is concerned, from the perusal of the statement of P.W. 1 Neera, P.W. 2 Moharmati and P.W. 3 Pyas and also the F.I.R. we find that the only allegation against appellant Balmati is that when accused Dharmu took the deceased in his room on the pretext of taking meals, appellant Balmati closed the door. There is no evidence available on record that there was any altercation between the deceased and appellant Balmati before he was taken by the accused Dharmu to his room or that the appellant Balmati in any manner participated or exhorted the accused Dharum for committing the above crime and therefore, we are of the considered opinion that only on the basis of an act attributed to this appellant that she closed the door of the room where the incident took place, common intention of this appellant to cause death of her own son along with accused Dharmu cannot be inferred and to that extent the

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finding of the Court below cannot be sustained and accordingly the judgment of the trial court holding the appellant Balmati guilty of Section 302, read with Section 34 and Section 342 of I.P.C., and sentencing her to undergo imprisonment for life and R.I. for one year respectively is set aside. The appellant be released forthwith if not required in any other case.

8. The appeal is accordingly allowed.

Sd/-
Fakhruddin
Judge
4-7-2006.

Sd/-
DHIRENDRA MISHRA
Judge
4-7-2006

P/-